

REMARKS

Claims 1-31 are currently pending in the subject application and are presently under consideration. Claims 1, 8, 17, 20, 24, 25, and 28 have been amended as shown on pp. 2-7 of the Reply. Claims 6 and 7 are cancelled herein without prejudice or disclaimer.

Favorable reconsideration of the subject patent application is respectfully requested in view of the comments and amendments herein.

I. Rejection of Claims 1-6 and 9-24 Under 35 U.S.C. §103(a)

Claims 1-6 and 9-24 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. application 2002/0163920 A1 filed by Walker *et al.* (hereinafter referenced as Walker) in view of U.S. patent 5,604,914 issued to Akiyoshi Kabe (hereinafter referenced as Kabe) on February 18, 1997. Withdrawal of this rejection is requested for at least the following reasons. Independent claims 1, 17, 20, 24, 25, and 28 have been amended herein to incorporate subject matter from claims 6 and 7. Walker and Kabe do not disclose the subject matter of claims 6 and 7, as noted by Examiner (*See* Office action dated July 12, 2007, page 14), therefore the rejections are moot.

II. Rejection of Claims 7 and 8 Under 35 U.S.C. §103(a)

Claims 7 and 8 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Walker, in view of Kabe, as applied to Claim 6 above, and further in view of U.S. application 2003/0014500 A1 filed by Schleiss *et al.* (hereinafter referenced as Schleiss *et al.*). (It is noted that Examiner identifies Schleiss *et al.* as “Trevor”, the inventor’s first name, in the previous communication. To avoid confusion and to conform with convention, reference to U.S. application 2003/0014500 A1 as “Schleiss *et al.*” rather than “Trevor” throughout this Reply.) Withdrawal of this rejection is respectfully requested for at least the following reasons. Walker, in view of Kabe, further in view of Schleiss *et al.*, each alone or in combination, does not disclose all aspects of the independent claims.

[T]he prior art reference (or references when combined) must teach or suggest all claim limitations. *See* MPEP

§706.02(j). The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *See In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Applicants' claimed system and methods relate to industrial control systems, and more particularly to a system and methodology to facilitate electronic and network security in an industrial automation system. To this end, amended independent claim 1 (and similarly amended independent claims 17, 20, 24, 25, and 28) recites *at least one security field associated with the factory protocol to authenticate at least one of a requestor of the data and a supplier of the data, the security field provides at least one of a security parameter or a performance parameter, **the factory protocol lowers encryption protocol standards for real time performance***. Neither Walker, Kabe, nor Schleiss *et al.*, each alone or in any combination, teaches this novel aspect.

Walker relates to communications, and more particularly, to a method and apparatus for providing flexibility and efficiency in managing network security. The document fails to disclose *lowering encryption protocol standards for real time performance* as recited in the subject claims. Kabe is similarly deficient, as noted by Examiner (*See* Office action dated July 12, 2007, page 14), who offers Schleiss to remedy this deficiency.

Schleiss *et al.* relates to process control systems and, more particularly, to the communication of transactional process control information within an enterprise. In general, the document discloses a way to standardize communication between enterprise systems to overcome a standards difference. In essence, the document translates one protocol to another to facilitate communication between disparate standards systems (*See* Abstract). The document discloses several operations, called process control systems (element **36** throughout Schleiss *et al.*), such as vibration monitoring routines, real-time optimization routines, expert system routines, loop monitoring routines, or any other desired data analysis or data processing routines (*See* ¶ [0051]). However, despite the use of the term "real-time", the document fails to disclose *a factory protocol that lowers an encryption protocol standard for real time performance*, as recited in the subject claims.

First, the process control routines, one of which happens to be a real-time optimization routine, are disclosed clearly in Schleiss *et al.* as the underlying source of the data to be transferred – not the transferring of the data itself. In contrast, the subject claims recite the communication of data occurring at real-time speed. Schleiss *et al.* discloses “real-time optimization” as applied to the underlying source of data, and not to the communication or transferal of that data. The document mentions “real-time optimization” in a list which includes vibration monitoring routines. Further, Fig. 6 shows “real-time optimization” and “real-time data” as clustered together in elements 404 and 402 respectively with such events as vibration monitoring. None of these elements can be considered to apply to the transmission of data because, like vibration monitoring, real-time optimization does not apply to the transmission of data, much less to *lowering an encryption standard for real time performance*.

Second, Schleiss *et al.* does not relate to security in general (at most, a passing mention of security is made), and certainly does not disclose *lowering an encryption standard for real time performance* as recited in the subject claim. One having ordinary skill in the art would not understand the unexplained mention of “real-time optimization” to disclose lowering security standards to accommodate real-time performance. The context of Schleiss *et al.* is translation and flexibility of communications standards – an area that is only tangentially related to security.

Third, even if the terse, unelaborated disclosure of “real-time optimization” can be construed to relate to security standards, there is no specific mention of lowering security standards to accommodate real-time performance. “Real-time optimization” at most disclose altering some characteristic to improve real-time performance in some way. One having ordinary skill in the art would not understand this to disclose altering security protocols to accommodate real-time performance, as disclosed in the subject claims. Examiner states, “One can employ weaker encryption protocols for data necessary for real-time performance and implement stronger security protocols for other data.” (*See* Office action dated July 12, 2007, page 14.) Examiner is reminded of the restriction against hindsight under current case law.

A factfinder should be aware, of course, of the distortion caused by hindsight bias and must be cautious of arguments reliant upon *ex post* reasoning. See *KSR v. Teleflex*, 550 U.S. ___, 127 S. Ct. 1727 (2007) citing *Graham v. John Deere Co. of Kansas City*, 383 U. S. 1, 36 (warning against a “temptation to read into the prior art the teachings of the invention in issue” and instructing courts to “guard against slipping into the use of hindsight” (quoting *Monroe Auto Equipment Co. v. Heckethorn Mfg. & Supply Co.*, 332 F. 2d 406, 412 (CA6 1964))).

Examiner’s statement is a clear violation of this well-founded doctrine. In hindsight, *after* reading applicants’ enabling disclosure, it is clear that one can lower security protocols to accommodate real-time performance, but not with the simple and unenlightening statement, “Real-time optimization”.

In view of the foregoing, it is readily apparent that Walker, Kabe, and Schleiss *et al.*, alone or in combination, fail to disclose each aspect of the subject claims. Accordingly, it is respectfully requested that the rejection be withdrawn.

III. Rejection of Claims 25-31 Under 35 U.S.C. §103(a)

Claims 25-31 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Walker, in view of Kabe, and further in view of “A1 Techniques Applied to High Performance Computing Intrusion Detection” by Susan M. Bridges, et al. (hereinafter referenced as Bridges). Similar to Walker, Kabe, and Schleiss *et al.*, Bridges is deficient with respect to the subject matter of amended independent claims 25 and 28, and associated dependent claims. Accordingly, the rejection should be withdrawn for at least the same reasons given above.

CONCLUSION

The present application is believed to be in condition for allowance in view of the above comments and amendments. A prompt action to such end is earnestly solicited.

In the event any fees are due in connection with this document, the Commissioner is authorized to charge those fees to Deposit Account No. 50-1063.

Should the Examiner believe a telephone interview would be helpful to expedite favorable prosecution, the Examiner is invited to contact applicants' undersigned representative at the telephone number below.

Respectfully submitted,

AMIN, TUROCY & CALVIN, LLP

/Himanshu S. Amin/

Himanshu S. Amin

Reg. No. 40,894

AMIN, TUROCY & CALVIN, LLP
24TH Floor, National City Center
1900 E. 9TH Street
Cleveland, Ohio 44114
Telephone (216) 696-8730
Facsimile (216) 696-8731